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Puerto Rico

AAFAF's Marrero Voices Support for Current PREPA RSA, Says Legislation Remains 'Biggest Concern' Based on Current Lack of Support in Legislature

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Puerto Rico Fiscal Agency and Financial Authority Executive Director Omar Marrero voiced the executive branch's commitment to completing the Puerto Rico Electric Power Authority's Title III case this year, under the terms of the current [restructuring support agreement](#), but acknowledged that the lack of support in the Legislature is a very substantial hurdle to that goal.

In a Wednesday, Jan. 19, [interview](#) with Reorg focused on this week's confirmation of the commonwealth plan of adjustment by the Title III court, Marrero positioned PREPA's debt restructuring as a key priority of both the administration of Gov. Pedro Pierluisi and the PROMESA oversight board, and he highlighted the government's aim to finish all of the pending restructurings - including PREPA and the [Highways and Transportation Authority](#) - in the current year.

"Obviously PREPA is the most complex, but that doesn't mean we cannot get it done," he said, noting that PREPA is a "priority" now that government and oversight board resources can be deployed away from the commonwealth's debt restructuring.

In outlining the global debt stack once all restructurings are done, Marero said: "The assumption here is that we are going to be implementing the PREPA RSA or something similar to that." The AAFAF chief said the oversight board is reaching out to legislative leaders "to see how we can lay out a roadmap to go forward with the PREPA RSA."

Asked if the political will and bipartisanship needed to enact [Act 53-2021](#), which was a requirement to get the commonwealth plan to confirmation, leaves the door open to winning passage of legislation contemplated in the PREPA RSA, Marrero anticipated an even tougher path through the Capitol.

"The RSA legislation is our biggest concern. We don't see the current Legislature providing that, but I could be wrong," he said. "I should say we are cautiously optimistic about being able to reach an agreement to move forward with the PREPA RSA."

The PREPA RSA requires that either Act 4 of 2016 be amended or other legislation be enacted to govern the securitization bonds and implement the transactions contemplated by the RSA, the recovery plan term sheet and the securitization term sheet. To meet the terms of the RSA, potential legislation would shape the securitization vehicle, implement the transition charge in the amounts scheduled in the RSA and implement demand protection measures. Act 4, which was approved to support an initial PREPA RSA that was ultimately rejected by the oversight board, created the PREPA Revitalization Corp., a special purpose vehicle to execute a restructuring of the public utility's debt through a securitization mechanism.

Marrero said the "sticking point" in the Legislature has been and continues to be demand protection charges in the RSA, acknowledging that as things stand now, it is unlikely that the Legislature would pass legislation allowing for the demand protections. "They have been clear on that," he said.

Marrero acknowledged that the existing PREPA securitization legislation, Act 4 of 2016, provides only a portion of what is necessary. "So we already have the securitization vehicle. But that is not enough because under that structure the rate would be variable - it would fluctuate. In this PREPA RSA, in order to have a fixed cap and predictable rate, the quid pro quo for the exchange was to have the demand protections," he said.

Marrero noted that electric utilities in other jurisdictions, including Hawaii, California and Vermont,

have implemented such nonbypassable charges as a response to net-metering inequity to ensure costs of social benefit programs are shouldered by both solar and nonsolar customers. The AAFAF chief characterized the demand protections contemplated in the PREPA RSA as a measure to “democratize” the utility’s legacy debt by ensuring that the burden of paying it post-restructuring does not fall solely on customers without the means to install solar systems.

Marrero pushed back on the solar industry’s characterization of the fee as a “sun tax” that will slow adoption of solar and Puerto Rico’s progress toward aggressive renewable energy goals. “We totally disagree because it is not based on consumption but more on the fact that you are using and benefiting from the grid that was built with legacy debt.”

The Legislature “sees it as an obstacle to renewable energy targets” established under [Act 17-2019](#), the island’s energy public policy law, Marrero said.

“We see the benefits of the PREPA RSA and have supported the PREPA RSA. But to be intellectually honest and pragmatic, we have to acknowledge that main sticking point. If there are ways to implement other provisions that could provide a similar benefit without requiring the legislation, that is something we could consider,” he said. “But that would be totally speculative at this moment.”

In a [status report](#) filed with the Title III court on Jan. 19, the oversight board says it is working toward proposing a plan of adjustment for PREPA by the end of March, while acknowledging that factors outside the control of the government parties might push the filing of a plan into the second quarter of 2022. The oversight board says that whether the Puerto Rico Legislature will support the current RSA “remains an open question.” The oversight board says it remains committed to the terms of the RSA “if all its terms can be carried out,” but it is also evaluating alternatives.

“We have a valid and existing RSA, and we’re just waiting for the oversight board to see what the strategy and next steps will be,” Marrero said. “But that is a priority, and I can hardly wait to get on it.”

--Kevin Mead

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